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In re Application of
Eric Berg et al.
Application No. 10/602,260
Filed: June 23, 2003
Attorney Docket No.: OIC0050US

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed May 24, 2012, to withdraw the holding of abandonment, which is being treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition under 37 CFR 1.181(b) is **GRANTED**.

This application became abandoned May 27, 2010 for failure to file a timely response to the non-Final Office Action mailed February 26, 2010, which set a three (3) month statutory period for reply. Accordingly, a Notice of Abandonment was mailed October 25, 2010. Petitioner asserts that the Office Action was never received.

The file record discloses that the non-Final Office Action and the Notice of Abandonment were mailed to the address of record, the same address also used for mailing previous correspondences which were in fact received, however, petitioner contends that the non-Final Office Action was not received. In support, petitioner indicates that a search of the Attorney's records, including the file wrapper and the application contents, indicates that the Office action was not received. Petitioner asserts that no master docket is maintained and in support of the claim of non-receipt, petitioner submits copies of the docket for attorney SGC, and an invention data sheet that was recently printed from the docketing system.

The statement and attachments corroborate non-receipt of the non-Final Office Action.

In view of the facts set forth in the petition, it is concluded that the non-Final Office Action was never received. Accordingly, the holding of abandonment is withdrawn. No petition fee is due and none has been charged.

This matter is being referred to Technology Center 3624 for a re-mailing of the non-Final Office Action and for a restarting of the period for response.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
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